

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

FILED
02 OCT 23 PM 1:18
U.S. DISTRICT COURT
N.D. OF ALABAMA

FRANK CERVANTES,

)

PETITIONER,

)

VS.

)

CV-99-H-1911-E

WARDEN RON WILEY,

)

RESPONDENT.

)

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ENTERED

OCT 23 2002

MEMORANDUM OF DECISION

On October 4, 2002 petitioner filed a motion to dismiss this action, without prejudice. Apparently that motion did not reach Magistrate Judge Armstrong prior to his October 8, 2002 report and recommendation that this action be dismissed for failure to exhaust remedies available to petitioner. Rather than review and act upon the report and recommendation, the court will enter an order granting petitioner's October 4, 2002 motion.

DONE this 23rd day of October, 2002.

Samuel H. Henderson

SENIOR UNITED STATES DISTRICT JUDGE